

showing the nature & quality of the thing. In such cases when the action or thing being done is offered in evidence, as a matter of course, the words which form a part of it must also be received in evidence; as if one seizes another by the arm, saying "I arrest you under a State Warrant" - these words are just as much a part of the act done as the action of taking by the arm. So, if one in possession of a house says, "I am here as the tenant of A. B." - this shows the nature of his possession, that it is, "congeable", as Lord Coke expresses it & not adverse - so it is a part of the act of being in possession. In our case the conversation between Mrs. Scott & the deceased, although it occurred at the time of the action or thing being done, to wit, her being in the road on her father's mare bare back, cannot in any point of view be considered a part of the act - It was entirely accidental & consisted simply of answers to inquiries which the curiosity of Mrs. Scott induced her to make. It does not show the nature or quality of her act, but purports only to set out her reasons for doing the act & her expectations as to ~~the~~ results. These answers may have been true or they may have been false - but they were not verified by the tests which the law of evidence requires and it was error to admit them as evidence against the prisoner. As the case must go back for another trial, we do not feel at liberty to enter into an expression of opinion in regard to the other matters of exception. But we see from the case sent that his Honor fell into

- back to 3<sup>d</sup> page -